In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2081

MICHAEL ROSS,

Plaintiff-Appellant,

v.

FIRST FINANCIAL CORPORATE SERVICES, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:19-cv-01849 — **Robert M. Dow, Jr.,** *Judge*.

ARGUED JANUARY 24, 2023 — DECIDED FEBRUARY 24, 2023

Before HAMILTON, KIRSCH, and JACKSON-AKIWUMI, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff Michael Ross worked as a sales representative for defendant First Financial Corporate Services, Inc. until January 2018. Ross filed this suit against First Financial and two of its senior executives for sales commissions he says he is owed. Under the terms of his employment contract, Ross could earn a commission at two different points: both when a customer first leased an equipment item

from First Financial and then at the end of a lease term, if the customer either extended the lease or purchased the equipment outright.

In early 2017, First Financial acted to reduce commission rates going forward. Ross contends in this suit that First Financial breached his contract by applying the new, lower commission rates to end-of-lease transactions that occurred after the change took effect if the leases originally began before the change. The district court granted summary judgment for defendants. 2022 WL 1567128 (N.D. Ill. May 18, 2022).

We affirm. We agree with the district court that the company's commission payments to Ross were correct because commissions on end-of-lease transactions are not earned until the customer actually agrees to and pays for the new transactions. Also, even though Ross was reluctant to accept the new plan, he still accepted it by continuing to work for First Financial under its terms.

I. *Factual and Procedural Background*

Michael Ross was a sales representative for First Financial Corporate Services, Inc. from 2010 until 2018. The parties agree that he was an at-will employee. He could leave his job at any time and for any reason, and First Financial could end his employment, also at any time and for any reason.

Ross marketed and leased equipment offered by the company. Each year he entered into a Sales Employee Agreement that spelled out the commissions he could earn. Those agreements provided in relevant part:

> [First Financial] will pay [Ross] monthly for any commissions due from transactions that closed in the previous month. A closed transaction is defined as one where all documentation is complete and the vendor has been paid, and in those cases where debt and/or equity is required, the debt and/or equity is placed and all documents are completed, and [First Financial] is in receipt of the funds.

Note in particular the requirement that the customer have paid before a commission would be due. Ross earned a commission on the initial leasing of equipment based on the present value of the lease and the acquisition costs of the equipment. He could also earn a commission on a "margin transaction" at the end of the original lease term when a customer could choose to buy the equipment outright or to extend the lease for another term or on a month-to-month basis. The commission rates for such "margin transactions" were much higher than those for the original leases. Also, after Ross met a sales quota each year, his commission rates increased for both initial and margin transactions.

This case concerns margin transactions that closed in 2017 in which customers chose to buy the leased equipment or to extend their leases. The critical point is that such margin transactions remained uncertain unless and until the customer made its choice and paid for them. Commissions for margin transactions also became payable only after reaching a "Threshold," when the payments received by First Financial under the lease exceeded an amount to make it profitable for First Financial.

From 2010 through 2016, Ross earned commissions under a commission plan that provided, on margin transactions, commissions of 35% before he met his sales quota and 40% after meeting his quota. That original commission plan provided that "margin will be credited and paid upon receipt of the payments from the Lessee based on excess margin above the Threshold amounts."

In early 2017, First Financial acted to cut commission rates going forward, including for new margin transactions on leases originating before January 1, 2017. Sales representatives would earn commissions of only 20% of the over-Threshold earnings on margin transactions they sold before meeting their sales quotas and 35% after meeting their quotas.

Ross received the new commission plan on February 14, 2017. The email transmitting the new plan began: "Attached is the 2017 Sales Commission Plan. Please review and execute by Friday February 17th; **you will not be paid commissions until this is signed and received by management.**" (Bold in original.) Ross has not based his claim on this threat to withhold payment of commissions. Instead, he objected to the change in commission structure, especially as applied to new "margin transactions" from leases that had begun under the older, more generous commission plan. Nevertheless, Ross reluctantly signed the new plan on February 20, 2017. He continued working for First Financial until he resigned in January 2018.

Invoking diversity jurisdiction under 28 U.S.C. § 1332, Ross sued First Financial in the Northern District of Illinois claiming he was owed unpaid commissions of about $340,000. He asserts that on certain margin transactions occurring after he signed the new commission plan, he should have been

paid commissions of 35% but was paid only 20%. First Financial, he insists, breached its contract with him and tried to impose a contract modification that should not be enforceable for lack of consideration.

On cross-motions for summary judgment, the district court granted summary judgment for defendants. The court ruled that First Financial validly modified Ross's at-will employment contract going forward. The court also found that commissions on new margin transactions were not earned when the leases first started but only when the optional margin transactions closed at the end of an original lease term. The court found that Ross was not entitled to any further commission payments for his 2017 margin transactions.

II. *Analysis*

We review the district court's summary judgment ruling de novo, and because Ross's claims are governed by Illinois law, we apply state law as we believe the Illinois Supreme Court would apply it in this case. *Sutula-Johnson v. Office Depot, Inc.*, 893 F.3d 967, 971 (7th Cir. 2018).

Prospective or Retroactive Modification: Ross's first argument is that the 2017 commission plan retroactively changed the calculation of commissions already earned. If that were correct, that would have been an invalid modification of his commission contract without offer, acceptance, and consideration. Yet Ross concedes and the Illinois case law teaches that if the 2017 change applied only to commissions earned after the change, then no new or separate consideration would be required. Ross was an at-will employee. Employers can modify at-will employment terms, including compensation, if the change is prospective. An employee can accept such a change

by merely continuing to work under the new terms, however reluctantly. *Geary v. Telular Corp.*, 793 N.E.2d 128, 131 (Ill. App. 2003); accord, *Sutula-Johnson*, 893 F.3d at 972–73 (affirming summary judgment for employer in relevant part on same theory).

The terms of the parties' contract tell us when Ross earned commissions on margin transactions. See generally *Matthews v. Chicago Transit Auth.*, 51 N.E.3d 753, 775–76 (Ill. 2016) (describing principles for interpreting contracts, including employment contracts). Ross's employment agreement said that commissions were earned for "closed transactions," defined as transactions "where all documentation is complete and the vendor has been paid … and [First Financial] is in receipt of the funds."

Under this definition, a margin transaction at the end of a lease term simply cannot be deemed to have been a "closed transaction" at the origination of a lease. When a lease term ends, a customer is entitled to choose to allow it to end and to return the leased equipment without making any further payments. A margin transaction occurs, and thus generates revenue and yields a commission, only if the customer exercises one of the other options (extend the lease or buy the equipment) and makes the additional payment. The transaction could not reasonably be deemed to have "closed" until after the end of the original lease—not at its inception, as Ross argues.

This reasoning is consistent with the written terms of the commission plans. The plans from 2010 to 2016 said that the "margin will be credited and paid upon receipt of the payments from the Lessee based on excess margin above the Threshold amounts." The 2017 plan language changed

slightly to say that commission "will be paid based on receipt of any monthly rental paid by the original lease customer past the base term of the lease and those rents *collected* resulting in excess margin above Threshold." In both cases, the plans specified that commissions on margin transactions would be paid only after First Financial received funds that exceeded the payments on the original lease. Such commissions could not be "earned" at the outset of the original lease.

As Judge Dow explained in the district court, "margin transactions are *optional* for a lessee" who may "opt to simply return the equipment, which would not generate any additional revenue for First Financial—and correspondingly, no additional commission" for Ross. 2022 WL 1567128 at *5; accord, *Geary*, 793 N.E.2d at 132–33 (finding a sale was not complete and did not entitle plaintiff to commissions when sale was still contingent on further efforts and negotiations). The district court was correct: Ross "earn[ed] commissions for margin transactions, if ever, when the margin transaction is completed, not months or often years prior, when the lease is originated." 2022 WL 1567128 at *6. As a result, the 2017 plan commission rates for margin transactions that occurred in 2017 were not retroactive and required no new or separate consideration. See *Geary*, 793 N.E.2d at 131–32 (affirming summary judgment for employer who reduced commissions going forward).

Acceptance: The remaining issue is whether Ross accepted the new 2017 commission plan to modify the terms of his contract with First Financial. See *Cox v. U.S. Fitness, LLC*, 2 N.E.3d 1211, 1218 (Ill. App. 2013) (valid modification of contract "must satisfy all criteria for a valid enforceable contract, including offer, acceptance and consideration"), quoting

Hannafan & Hannafan, Ltd. v. Bloom, 959 N.E.2d 1280 (Ill. App. 2011). Ross argues that his signature on the 2017 commission plan was not a valid acceptance because he disagreed with the new commission structure and felt he had no choice but to sign it.

This view is not consistent with Illinois law. "When an at-will employee continues to work after a change in commission plan, he is deemed to have accepted the change." *Geary*, 793 N.E.2d at 131, citing *Schoppert v. CCTC International, Inc.*, 972 F. Supp. 444, 447 (N.D. Ill. 1997). Ross continued to work for First Financial until he resigned in 2018. His continued work, whether he was enthusiastic or reluctant, established his acceptance of the new plan. *Sutula-Johnson*, 893 F.3d at 972–73.

As noted above and during the oral argument, First Financial sent the new, lower commission plan for 2017 with an email that said that Ross would not be paid commissions until he signed the new commission plan. First Financial could lawfully have told Ross, as an at-will employee, that he would be fired if he did not accept the new commission plan. E.g., *Schoppert*, 972 F. Supp. at 447. But that's not what First Financial said. Instead, it threatened not to pay him until he agreed, and that particular threat had teeth only if Ross had already earned commissions for which he had not yet been paid.

Such a threat to refuse to pay sums that Ross had already earned seems difficult to reconcile with Illinois law. See 820 Ill. Comp. Stat. 115/3 (requiring employers to pay earned commissions at least monthly), and 115/14 (criminal penalties and civil remedies for failure to pay earned "wages" as defined in 115/2 to include commissions). As a general rule, unlawful conduct renders voidable a contract secured through that

conduct. See *Alexander v. Standard Oil Co.*, 423 N.E.2d 578, 582–83 (Ill. App. 1981) (discussing issue in terms of duress); see also *Bank of America, N.A. v. 108 North State Retail LLC*, 928 N.E.2d 42, 57 (Ill. App. 2010) (unlawful threats may show duress, but lawful demand or threat to do what actor has legal right to do does not show duress). Ross has not made any argument on this basis, however, and we will not speculate about his reasons. We note the point, however, because this opinion should not be understood as approving such a threat by an employer.

AFFIRMED